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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 2789 of 2006

Petitioners	1.	Pratapi Bai, Wd/o Late Ramcharan, aged about 47 years, Caste – Sahu.
	2.	Paras Ram, S/o Late Ram Charan, aged about 35 years.
	3.	Vijay Kumar S/o Late Ram Charan, aged about 34 years, Occupation Service (Katkona Colliery), R/o Village Rampur, P.S. Patna, Tahsil Baikunthpur, Distt. Koria (C.G.)
	Versus	
Respondents	1.	Smt. Indrakunwar, Wd/o Late Ram Charan, aged about 48 years, R/o Khada, P.S. & Tahsil, Baikunthpur, Distt. Koria (C.G.)
	2.	Area Manager, S.E.C.L. Katkona Colliery.
	3.	General Manager, S.E.C.L. Baikunthpur area, Baikunthpur, Distt. Koria (C.G.)
	4.	Regional Commissioner, Coal Mines Provident Fund, Shaktinagar, Gupteshwar, Jabalpur (M.P.)

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri D. N. Prajapati, Advocate for the petitioners.

Shri Yashwant Tiwari, Advocate for the respondent No.1.

Shri Abhishek Sinha, Advocate for the respondents No. 2 and 3.

None for the respondent No.4.

ORDER

(Passed on this 20th day of March, 2007)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. The petitioner No.1, claiming to be legally wedded wife of Late Ramcharan and petitioners No. 2 and 3 as sons of Late Ramcharah, have filed this petition claiming for following reliefs:-

"7.1 That, this Hon'ble Court may further kindly be pleased to direct the respondent no. 2 to 4 to release the retiral dues forthwith in favour of the petitioners.

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7.1 That, the Hon'ble Court may further be pleased to direct any other writ/order/direction to the respondents that it deems fit in the present facts and circumstances of the case.

7.2 Cost of the petition may kindly be allowed."

2. On hearing learned counsel appearing for the parties and on perusal of the documents appended to the pleadings, it appears that a Succession Case No. 6/99, filed by the respondent No.1, is pending in the Court of Civil Judge, Class-I, Baikunthpur, District – Koria. The petitioner has filed this petition for grant of retiral dues of Late Ramcharan, who was working in Katkona Colliery of S.E.C.L. and died on 9.1.1999.

3. The disputed questions of facts are involved in this case as the petitioner No.1 and the respondent No.1 are claiming to be the legally wedded wife of Late Ramcharan.

4. Shri Abhishek Sinha, learned counsel appearing for the respondents No. 2 and 3 submits that so far as payment of gratuity is concerned, the respondents No. 2 and 3 have already deposited a sum of Rs. 1,95,943/- with the Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Shahdol (M.P.), on 18.1.2002. The petitioner had filed a Case No. SH-48(7) 2002 before the Controlling Authority for release of gratuity amount. The Controlling Authority vide order dated 8th July, 2004 (Annexure R-2/2) has categorically recorded the finding, that despite several opportunities granted to the petitioner (applicant therein), the petitioner has not come forward to stake her claim for grant of payment of gratuity, thus closed the case. The money is still lying with the Controlling Authority. It appears that since the factum of being wife of Late Ramcharan is in dispute and the same is pending consideration before the Civil Jude, Baikunthpur, the petitioner had not appeared before the Controlling Authority for payment of gratuity amount.

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5. Be that as it may, this Court in exercise of its jurisdiction under Article 226/227 of the Constitution cannot decide disputed question of facts of this nature, wherein oral and other evidence are required to be adduced and examined. Since the matter is already pending consideration in Succession Case No. 6/99, filed by the respondent No.1, before the Court of Civil Judge, Class-I, Baikunthpur, District – Koria, no relief can be granted to the petitioner.

6. In view of the foregoing, this petition deserves to be and is dismissed, accordingly. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur